

<div>CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795</div> <div>STAFF REPORT</div>	Hearing Date/Agenda Number P.C. 12/10/03 Item: 3.e.	
	File Number CP 03-047	
	Application Type Conditional Use Permit	
	Council District 6	
	Planning Area Central	
	Assessor's Parcel Number(s) 274-10-005	
PROJECT DESCRIPTION		
Completed by: Erin Morris		
Location: Northerly side of Dana Avenue approximately 180 feet southeasterly from Naglee Avenue		
Gross Acreage: 21                      Net Acreage: 21                      Net Density: N/A		
Existing Zoning: R-1-8                      Existing Use: Public School		
Proposed Zoning: No change                      Proposed Use: Public School and Wireless Communication Monopole		
GENERAL PLAN		
Completed by: ELM		
Land Use/Transportation Diagram Designation Public/Quasi-Public		Project Conformance: [x] Yes    [ ] No [ ] See Analysis and Recommendations
SURROUNDING LAND USES AND ZONING		
Completed by: ELM		
North: Single-family and Multi-family Residential & Rosicrucian Museum		CP Commercial Pedestrian and R-M Residence
East: Single-family Residential		R-1-8
South: Single-family Residential and school		R-1-8
West Single-family Residential & Municipal Rose Garden		R-1-8
ENVIRONMENTAL STATUS		
Completed by: ELM		
[ ] Environmental Impact Report found complete [ ] Negative Declaration circulated [ ] Negative Declaration adopted		[X] Exempt [ ] Environmental Review Incomplete
FILE HISTORY		
Completed by: ELM		
Annexation Title: College Park/ Burbank Sunol		Date: December 8, 1925
PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION		
[ ] Approval [x] Approval with Conditions [ ] Denial [ ] Uphold Director's Decision		Date: _____ Approved by: _____ [ ] Action [ ] Recommendation
APPLICANT	OWNER	
Zachary Carter, Cingular Wireless PO Box 26460 San José, CA 95159-6460	San José Unified School District 855 Lenzen Avenue San José, CA 95126	

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**PUBLIC AGENCY COMMENTS RECEIVED**

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Completed by: ELM

Department of Public Works

None received

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**OTHER DEPARTMENTS AND AGENCIES**

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Fire Department

None received

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**GENERAL CORRESPONDENCE**

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None received.

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**ANALYSIS AND RECOMMENDATIONS**

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**BACKGROUND**

The applicant, Cingular Wireless Company, is requesting a Conditional Use Permit to allow replacement of an existing athletic field light pole with a wireless communication facility including six antennae mounted on a new 60-foot monopole/athletic field light pole and a 250 square-foot equipment enclosure on a 21 gross acre public school site in the R-1-8 Residential Zoning District. The property is located on the northerly side of Dana Avenue approximately 180 feet southeasterly of Naglee Avenue. The proposed monopole/light pole is located on the school site adjacent to the baseball fields. Wireless communication antennas require a Conditional Use Permit in the R-1-8 Residential District.

Surrounding land uses are comprised of single-family and multi-family residences, commercial uses, and the Rosicrucian Museum Park to the north, single-family uses to the east, single-family and school uses to the south, and single-family and the Municipal Rose Garden to the west. The Rosegarden Library is located on the subject site, immediately to the west of the proposed monopole.

A 6-foot high vinyl coated chain link fence with access gates will surround the monopole and associated equipment cabinets. Equipment cabinets will be mounted on a concrete pad.

In 1996, staff explored the issues of electromagnetic radiation to determine if emissions from antennas of the proposed type posed a public health concern. Staff found that the low-frequency, low-energy, non-ionizing emission associated with wireless communications antennas were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennas. Further, staff investigated reports that wireless communication transmission interfered with hearing aids, pace makers, and other electronic devices. Staff determined that the reported interference resulted from cordless telephones and not from the antennas.

**ENVIRONMENTAL REVIEW**

The Director of Planning has determined that this project is exempt from environmental review under the provisions of the California Environmental Quality Act pursuant to Section 15301 which pertains to minor alteration of existing facilities involving negligible or no expansion of use. The proposed project is consistent with this section in that the project involves the leasing of a portion of the site for replacement of an existing athletic field light pole with a new 60-foot monopole/athletic field light pole with six antennae, and an equipment

enclosure occupying up to 250 square feet.

## **GENERAL PLAN CONFORMANCE**

The site is designated Public/Quasi-Public on the San José 2020 General Plan Land Use/Transportation Diagram. The proposed project conforms to this designation.

The height limit prescribed by the General Plan is 50 feet; however, Urban Design Policy No. 11 allows structures in non-residential designations, where substantial height is intrinsic to the function of the structures and where such structures are located to avoid significant adverse effects on adjacent properties, to extend to a maximum height of 100 feet if the site and structure are designed to minimize public visibility, the project provides visual amenities such as landscaping to offset potential visual impacts of the project, and there is adequate evidence that technical necessity requires greater height. The proposed project conforms to the General Plan height limits in that the new facility is a structure-mounted monopole, is designed to replace an existing athletic field light pole and incorporate the lights on the new structure, and the site will be landscaped to offset visual impacts including landscaping that will screen the equipment enclosure and the planting of six new trees on the site.

## **PUBLIC OUTREACH**

A notice of the Planning Commission Public hearing were mailed to all owners and tenants of property within a 500-foot radius of the project site. Staff has been available to discuss the project with members of the public.

## **ANALYSIS**

The primary issues associated with this proposal is consistency with the Zoning Code, and the *Land Use Policy for Wireless Communication Facilities; Council Policy 6-20* (see attached).

### **Zoning Code**

The development standards prescribe a height limit of 35 feet in the R-1-8 Zoning District. However, Section 20.80.1900 allows the maximum height of a wireless communication antenna to reach up to 60 feet provided the antenna is a “slim” pole design or is structure-mounted and is visually integrated into the structure and all ancillary equipment is adequately screened. Staff believes that the proposed wireless communication facility conforms to the Zoning Code in that the new monopole/light pole will be no taller than 60 feet in height and the flat-mounted antennas will be integrated into a new monopole/light pole structure designed to minimize visual clutter by replacing an existing light pole. In addition, the ancillary equipment will be surrounded by a vinyl-coated chain-link fence and appropriately screened with landscaping. While chain link would not normally be considered an acceptable fencing material, staff believes that it is appropriate in the case, given that the school property is fenced entirely with chain link. Vinyl coating will improve the durability and appearance of the fencing over time, and the new fence will be screened with landscaping.

### **Land Use Policy for Wireless Communication Facilities (Council Policy 6-20)**

Council Policy 6-20 specifies that new wireless communication facilities should be sited so as to minimize visual impacts. After reviewing a proposal for a faux tree monopole and considering opportunities for building-mounted facilities in the area, staff has concluded that the currently proposed monopole/light fixture most effectively minimizes visibility of the proposed antennas. The new light pole facility is located on a school

athletic field among other field lights of similar height and design, is set back over 100 feet from the nearest public street, and will not eliminate required parking, in conformance with the Policy. Staff has included a condition in the draft permit requiring the planting of six 15-gallon trees to provide a visual amenity for the site to offset the minimal visual intrusion of the new pole. A five-year time condition has been included in the Permit in conformance with the Policy recommendations.

Based on this analysis, staff concludes that the proposed project conforms to the Council Policy and is compatible with the surrounding neighborhood.

## **RECOMMENDATION**

The Planning staff is recommending that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding the proposed project.

1. This site has a designation of Public/Quasi-Public on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the R-1-8 Residential Zoning District.
3. The project is exempt from environmental review under Section 15301.
4. The property is located on the northerly side of Dana Avenue approximately 180 feet southeasterly of Naglee Avenue.
5. The proposed monopole/light pole is located on the school site adjacent to the baseball fields. Wireless communication antennas require a Conditional Use Permit in the R-1-8 Residential District.
6. The applicant is requesting a Conditional Use Permit (CUP) to allow replacement of an existing athletic field light pole with a wireless communication facility including six antennae mounted on a new 60-foot monopole/athletic field light pole and a 250 square-foot equipment enclosure on the San José Unified School District property.
7. Surrounding land uses are comprised of single-family and multi-family residences, commercial uses, and the Rosicrucian Museum Park to the north, single-family uses to the east, single-family and school uses to the south, and single-family and the Municipal Rose Garden to the west. The Rosegarden Library is immediately to the west of the proposed monopole.
8. A 6-foot high vinyl coated chain link fence with access gates and landscape screening will surround the monopole and associated equipment cabinets. Equipment cabinets will be mounted on a concrete pad.
9. In 1996, staff explored the issues of electromagnetic radiation to determine if emissions from antennas of the proposed type posed a public health concern. Staff found that the low-frequency, low-energy, non-ionizing emission associated with wireless communications antennas were well below the recognized safety standards set by the American National Standards Institute (ANSI). Staff concluded there was no evidence that such transmission would result in adverse health effects to people living or working in the vicinity of the antennas. Further, staff investigated reports that wireless communication transmission interfered with

hearing aids, pace makers, and other electronic devices. Staff determined that the reported interference resulted from cordless telephones and not from the antennas.

10. This project is exempt from environmental review under the provisions of the California Environmental Quality Act pursuant to Section 15301 which pertains to minor alteration of existing facilities involving negligible or no expansion of use. The proposed project is consistent with this section in that the project involves the leasing of a portion of the site for replacement of an existing athletic field light pole with a new 60-foot monopole/athletic field light pole with six antennae, and an equipment enclosure occupying up to 250 square feet.
11. The site is designated Public/Quasi-Public on the San José 2020 General Plan Land Use/Transportation Diagram.
12. The height limit prescribed by the General Plan is 50 feet; however, Urban Design Policy No. 11 allows structures in non-residential designations, where substantial height is intrinsic to the function of the structures and where such structures are located to avoid significant adverse effects on adjacent properties, to extend to a maximum height of 100 feet if the site and structure are designed to minimize public visibility, the project provides visual amenities such as landscaping to offset potential visual impacts of the project, and there is adequate evidence that technical necessity requires greater height.
13. The development standards prescribe a height limit of 35 feet in the R-1-8 Zoning District. However, Section 20.80.1900 allows the maximum height of a wireless communication antenna to reach up to 60 feet provided the antenna is a “slim” pole design or is structure-mounted and is visually integrated into the structure and all ancillary equipment is adequately screened.
14. The new monopole/light pole will be no taller than 60 feet in height, and the flat-mounted antennas will be integrated into a new monopole/light pole structure designed to minimize visual clutter by replacing an existing light pole.
15. The ancillary equipment will be screened by appropriate landscaping.
16. The new light pole facility is located on a school athletic field among other field lights of similar height and design and is set back over 100 feet from the nearest street.
17. Staff has included a condition in the draft permit requiring the planting of six 15-gallon trees to provide a new visual amenity to the site to offset the minimal visual intrusion of the new pole.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project conforms to applicable criteria of the *City Council Land Use Policy for Wireless Communications Facilities*.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

## CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Revised Plans.** Within 60 days of the issuance of this permit and prior to recordation, the applicant shall revise the project plans to include the item(s) listed below to the satisfaction of the Director of Planning. Failure to provide said revisions within 60 days shall render this permit null and void.
  - a. Modify the height of the proposed chain-link fencing to be no taller than 6 feet and note that the fencing shall

be vinyl coated, and;

- b. Show the locations where the six 15-gallon trees shall be planted on-site, to the satisfaction of the Director of Planning. Failure to provide said revisions within 60 days shall render this permit null and void.
- c. Provide a landscape plan that denotes the type, size, and location of the new landscaping that will screen the equipment closure, to the satisfaction of the Director of Planning.

## CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Middle School Field SF-907-03", dated September 23, 2002 last revised October 27, 2003, and as revised by Condition #2" on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
2. **Tree Planting.** Within 18 months of permit issuance, six 15-gallon trees shall be planted in the locations shown on the approved plan set to the satisfaction of the Director of Planning. Within 30 days of the planting of the trees, the property owner shall provide a letter to the Planning Department indicating that the trees have been planted. The letter shall include the file number, CP03-047.
3. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
5. **Lighting.** Relocation of the existing lights from the existing pole to the new monopole/light pole is approved. No new lighting is approved.
6. **Tree Removals.** No tree larger than 56 inches in circumference, at a height 24 inches above the natural grade slope, may be removed without a Tree Removal Permit issued by the Director of Planning.
7. **Utilities.** All new on-site telephone and electrical service facilities shall be placed underground.
8. **Colors and Materials.** All wireless communications antennas colors and materials are to be those specified on the approved plan set.
9. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
  - a. *Construction Plans.* This permit file number, CP03-047, shall be printed on all construction plans submitted to the Building Division.
  - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
10. **Hazardous Materials.** The applicant shall submit names and amount of any hazardous materials to be used or stored within the project site to the Hazardous Materials Division (277-4659). Use or storage of hazardous

materials, liquids, gases and/or chemicals are subject to the requirements of the Hazardous Materials Storage Ordinance, the Toxic Gas Ordinance, the applicable sections of the San José Fire Code, and the National Fire Code.

11. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, wall and fence surfaces within 48 hours of defacement.
12. **Collocation.** The applicant and wireless communication facility operator shall facilitate the future collocation of wireless communication antennas on this monopole. The applicant and wireless communication facility operator shall notify the Director of Planning of any proposals by other wireless communication providers to collocate antennas on this monopole. The notification shall occur within 30 days of receipt of the proposal, and shall include the file number of this Permit.
13. **Monopole Removal.** The applicant shall remove the antennae and associated wireless communication equipment and enclosure from the site at such time as the pole is no longer used to support a wireless communication antenna.

## CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning, Building and Code Enforcement may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.
3. **Time Limit.** This Conditional Use Permit expires and has no further force or effect five years from the date of this Permit. At that time, that applicant/owner shall provide information to the City so that we may determine if the monopole is still needed, based on possible improvements in technology. **PLEASE NOTE THAT THIS CONDITIONAL USE PERMIT HAS BEEN GRANTED FOR A PERIOD OF 5 (FIVE) YEARS ONLY. YOU ARE BEING SPECIFICALLY AND SEPARATELY ADVISED OF THIS TIME LIMITATION SO THAT YOU WILL CONSIDER THIS TIME LIMITATION IN YOUR DECISION TO ACCEPT THIS PERMIT OR AS YOU MAKE ANY INVESTMENT DECISION**



**RELATED TO THIS PROPERTY.**

4. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180 calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.

c: Sonya Shurr, San Jose Unified School District, 855 Lenzen Avenue, San Jose, CA 95126

ELM:ll/207-10